

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

MICHAEL J. MOCERI,

Debtor.

Case No. 08-42078

Chapter 7

Hon. Thomas J. Tucker

FIFTH THIRD BANK,

Plaintiff,

vs.

Adv. Pro. No. 08-4642

MICHAEL J. MOCERI,

Defendant.

**ORDER DENYING REQUEST BY PLAINTIFF'S COUNSEL FOR LEAVE TO
WITHDRAW, AND REQUIRING ASSIGNEE ASSETS RESOLUTION CORPORATION
TO FILE A MOTION TO SUBSTITUTE ITSELF AS PLAINTIFF, IN PLACE OF FIFTH
THIRD BANK**

This adversary proceeding is before the Court on the stipulation between counsel for Fifth Third Bank ("Plaintiff Bank") and counsel for Defendant, filed January 29, 2009 (Docket # 13, the "Stipulation"). By the Stipulation, Plaintiff Bank's counsel seeks among other things an order granting it leave to withdraw as counsel for Plaintiff. The basis for this request is that, according to the Stipulation, Plaintiff Bank has sold its loan and claim(s) against Defendant, to Assets Resolution Corporation.

Having reviewed the Stipulation and its exhibits, the Court will deny the request for leave to withdraw, and order the other relief contained in this Order, because Plaintiff Bank remains the Plaintiff (nominally, but no longer as the real party in interest) in this adversary proceeding. As long as that is the case, there is no good reason that is apparent to the Court allow Plaintiff

Bank's attorneys to withdraw. On the other hand, when the new owner of the claim(s) against Defendant is substituted into this adversary proceeding as Plaintiff, there will be no need for Plaintiff Bank's counsel to withdraw, because counsel's client – Fifth Third Bank – will no longer be a party in this case. Accordingly,

IT IS ORDERED that Seyburn, Kahn, Ginn, Bess and Serlin, P.C.'s request for leave to withdraw as counsel for Plaintiff Bank in this adversary proceeding is denied.

IT IS FURTHER ORDERED that the assignee of Plaintiff Bank, *i.e.*, Assets Resolution Corporation ("ARC"), must file a motion under Fed.R.Civ.P. 25(c), made applicable in this adversary proceeding by Fed.R.Bankr.P. 7025, to substitute itself as Plaintiff in the place of its assignor, Fifth Third Bank. ***Such motion must be filed no later than February 6, 2009. Failure to do this by the stated deadline may result in the dismissal of this adversary proceeding, without further notice or hearing.***

IT IS FURTHER ORDERED that Plaintiff Bank must serve a copy of this Order on Assets Resolution Corporation, and then file proof of such service, all ***no later than January 30, 2009.***

IT IS FURTHER ORDERED that the Adversary Proceeding Scheduling Order, filed August 25, 2008 (Docket # 9), is not altered by this Order, and remains in effect, including the dates for the final pretrial conference and the trial (February 9, 2009 and February 17, 2009, respectively).

Signed on January 29, 2008

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge